

RETIREMENT AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist

House Sponsor: Melvin R. Brown

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions related to the retirement systems.

Highlighted Provisions:

This bill:

- ▶ amends the definition of defined contribution to include deferred compensation plans;
- ▶ allows an employer to pay required retirement contributions to a nonqualified compensation plan administered by the board, if the employer is not participating in a qualified defined contribution plan;
- ▶ allows the retirement system to deduct from payments made to beneficiaries for money that is owed to the retirement system;
- ▶ repeals transition language related to eligibility of an enhanced public safety retirement cost-of-living adjustment;
- ▶ provides an application process for employers to participate in the Firefighters Retirement System; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-11-102, as last amended by Laws of Utah 2008, Chapter 335

49-11-504, as last amended by Laws of Utah 2007, Chapter 130

49-11-612, as last amended by Laws of Utah 2008, Chapter 229

49-14-403, as last amended by Laws of Utah 2008, Chapter 227

49-15-403, as last amended by Laws of Utah 2008, Chapter 227

49-16-202, as renumbered and amended by Laws of Utah 2002, Chapter 250

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **49-11-102** is amended to read:

49-11-102. Definitions.

As used in this title:

(1) (a) "Active member" means a member who is employed or who has been employed by a participating employer within the previous 120 days.

(b) "Active member" does not include retirees.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables as recommended by the actuary and adopted by the executive director, including regular interest.

(3) "Actuarial interest rate" means the interest rate as recommended by the actuary and adopted by the board upon which the funding of system costs and benefits are computed.

(4) (a) "Agency" means:

(i) a department, division, agency, office, authority, commission, board, institution, or hospital of the state;

(ii) a county, municipality, school district, local district, or special service district;

(iii) a state college or university; or

(iv) any other participating employer.

(b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a subdivision of another entity listed under Subsection (4)(a).

(5) "Allowance" or "retirement allowance" means the pension plus the annuity,

including any cost of living or other authorized adjustments to the pension and annuity.

(6) "Alternate payee" means a member's former spouse or family member eligible to receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

(7) "Annuity" means monthly payments derived from member contributions.

(8) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of a participating employer whose appointed position is designated in the participating employer's charter, creation document, or similar document, and who earns during the first full month of the term of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-12-407.

(9) (a) "At-will employee" means a person who is employed by a participating employer and:

(i) who is not entitled to merit or civil service protection and is generally considered exempt from a participating employer's merit or career service personnel systems;

(ii) whose on-going employment status is entirely at the discretion of the person's employer; or

(iii) who may be terminated without cause by a designated supervisor, manager, or director.

(b) "At-will employee" does not include a career employee who has obtained a reasonable expectation of continued employment based on inclusion in a participating employer's merit system, civil service protection system, or career service personnel systems, policies, or plans.

(10) "Beneficiary" means any person entitled to receive a payment under this title through a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.

(11) "Board" means the Utah State Retirement Board established under Section 49-11-202.

(12) "Board member" means a person serving on the Utah State Retirement Board as established under Section 49-11-202.

(13) "Contributions" means the total amount paid by the participating employer and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act.

(14) "Council member" means a person serving on the Membership Council established under Section 49-11-202.

(15) "Covered individual" means any individual covered under Chapter 20, Public Employees' Benefit and Insurance Program Act.

(16) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16, 17, 18, and 19.

(17) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a system or plan offered under this title to provide a specified allowance to a retiree or a retiree's spouse after retirement that is based on a set formula involving one or more of the following factors:

(a) years of service;

(b) final average monthly salary; or

(c) a retirement multiplier.

(18) "Defined contribution" or "defined contribution plan" means any defined contribution plan or deferred compensation plan authorized under the Internal Revenue Code and administered by the board.

(19) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including:

(a) the State Board of Education and its instrumentalities;

(b) any institution of higher education and its branches;

(c) any school district and its instrumentalities;

(d) any vocational and technical school; and

(e) any entity arising out of a consolidation agreement between entities described under this Subsection (19).

(20) (a) "Employer" means any department, educational institution, or political subdivision of the state eligible to participate in a government-sponsored retirement system under federal law.

(b) "Employer" may also include an agency financed in whole or in part by public funds.

(21) "Exempt employee" means an employee working for a participating employer:

(a) who is not eligible for service credit under Section 49-12-203, 49-13-203, 49-14-203, 49-15-203, or 49-16-203; and

(b) for whom a participating employer is not required to pay contributions or nonelective contributions.

(22) "Final average monthly salary" means the amount computed by dividing the compensation received during the final average salary period under each system by the number of months in the final average salary period.

(23) "Fund" means any fund created under this title for the purpose of paying benefits or costs of administering a system, plan, or program.

(24) (a) "Inactive member" means a member who has not been employed by a participating employer for a period of at least 120 days.

(b) "Inactive member" does not include retirees.

(25) (a) "Member" means a person, except a retiree, with contributions on deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act, or with a terminated system.

(b) "Member" also includes leased employees within the meaning of Section 414(n)(2) of the Internal Revenue Code, if the employees have contributions on deposit with the office. If leased employees constitute less than 20% of the participating employer's work force that is not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code, "member" does not include leased employees covered by a plan described in Section 414(n)(5) of the federal Internal Revenue Code.

(26) "Member contributions" means the sum of the contributions paid to a system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a system, and which are made by:

(a) the member; and

(b) the participating employer on the member's behalf under Section 414(h) of the Internal Revenue Code.

(27) "Nonelective contribution" means an amount contributed by a participating employer into a participant's defined contribution account.

(28) "Office" means the Utah State Retirement Office.

(29) "Participant" means an individual with voluntary deferrals or nonelective

contributions on deposit with the defined contribution plans administered under this title.

(30) "Participating employer" means a participating employer, as defined by Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public funds which is participating in a system or plan as of January 1, 2002.

(31) "Pension" means monthly payments derived from participating employer contributions.

(32) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by Chapter 19, Utah Governors' and Legislators' Retirement Act, or the defined contribution plans created under Section 49-11-801.

(33) (a) "Political subdivision" means any local government entity, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity employees of the state.

(b) "Political subdivision" includes local districts, special service districts, or authorities created by the Legislature or by local governments, including the office.

(c) "Political subdivision" does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

(34) "Program" means the Public Employees' Insurance Program created under Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees' Long-Term Disability program created under Chapter 21, Public Employees' Long-Term Disability Act.

(35) "Public funds" means those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

(36) "Qualified defined contribution plan" means a defined contribution plan that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

(37) "Refund interest" means the amount accrued on member contributions at a rate adopted by the board.

(38) "Retiree" means an individual who has qualified for an allowance under this title.

(39) "Retirement" means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.

(40) "Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.

(41) "Service credit" means:

(a) the period during which an employee is employed and compensated by a participating employer and meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are paid to the office; and

(b) periods of time otherwise purchasable under this title.

(42) "System" means the individual retirement systems created by Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement Act.

(43) "Voluntary deferrals" means an amount contributed by a participant into that participant's defined contribution account.

Section 2. Section **49-11-504** is amended to read:

49-11-504. Reemployment of a retiree -- Restrictions.

(1) A person who retires from a nonparticipating employer is not subject to any postretirement restrictions under this title.

(2) A retiree of an agency who returns to work at a different agency is not subject to any postretirement restrictions under this section and may not earn additional service credit.

(3) For the purposes of Subsections (4) and (5), "full-time" employment means employment requiring 20 hours of work per week or more or at least a half-time teaching contract.

(4) A retiree of an agency who is reemployed on a full-time basis by the same agency within six months of the date of retirement is subject to the following:

(a) the agency shall immediately notify the office;

(b) the office shall cancel the retiree's allowance and reinstate the retiree to active

member status;

(c) the allowance cancellation and reinstatement to active member status is effective on the first day of the month following the date of reemployment;

(d) the reinstated retiree may not retire again with a recalculated benefit for a two-year period from the date of cancellation of the original allowance, and if the retiree retires again within the two-year period, the original allowance shall be resumed; and

(e) a reinstated retiree retiring after the two-year period shall be credited with the service credit in the retiree's account at the time of the first retirement and from that time shall be treated as a member of a system, including the accrual of additional service credit, but subject to recalculation of the allowance under Subsection (9).

(5) A retiree of an agency who is reemployed by the same agency within six months of retirement on a less than full-time basis by the same agency is subject to the following:

(a) the retiree may earn, without penalty, compensation from that position which is not in excess of the exempt earnings permitted by Social Security;

(b) if a retiree receives compensation in a calendar year in excess of the Social Security limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;

(c) the effective date of a suspension and reinstatement of an allowance shall be set by the office; and

(d) any suspension of a retiree's allowance under this Subsection (5) shall be applied on a calendar year basis.

(6) For six months immediately following retirement, the retiree and participating employer shall:

(a) maintain an accurate record of gross earnings in employment;

(b) report the gross earnings at least monthly to the office;

(c) immediately notify the office in writing of any postretirement earnings under Subsection (4); and

(d) immediately notify the office in writing whether postretirement earnings equal or exceed the exempt earnings under Subsection (5).

(7) A retiree of an agency who is reemployed by the same agency after six months from the retirement date is not subject to any postretirement restrictions under this title and may not earn additional service credit.

(8) (a) If a participating employer hires a nonexempt retiree who may not earn additional service credit under this section, the participating employer shall contribute the same percentage of a retiree's salary that the participating employer would have been required to contribute if the retiree were an active member, up to the amount allowed by federal law~~[, to a retiree designated:]~~.

(b) The contributions shall be paid to a retiree-designated:

~~[(a)]~~ (i) qualified defined contribution plan administered by the board, if the participating employer participates in a qualified defined contribution plan administered by the board; or

~~[(b)]~~ (ii) qualified defined contribution plan offered by the participating employer if the participating employer does not participate in a qualified defined contribution plan administered by the board.

(c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not participating in a qualified defined contribution plan administered by the board, the employer may elect to pay the contributions to a nonqualified deferred compensation plan administered by the board.

(9) Notwithstanding any other provision of this section, a retiree who has returned to work, accrued additional service credit, and again retires shall have the retiree's allowance recalculated using:

(a) the formula in effect at the date of the retiree's original retirement for all service credit accrued prior to that date; and

(b) the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

(10) This section does not apply to elected positions.

(11) The board may make rules to implement this section.

Section 3. Section **49-11-612** is amended to read:

49-11-612. Domestic relations order benefits -- Nonassignability of benefits or payments -- Exemption from legal process.

(1) As used in this section, "domestic relations order benefits" means:

(a) an allowance;

(b) a defined contribution account established under Title 49, Chapter 11, Part 8,

276 Defined Contribution Plans;

277 (c) a continuing monthly death benefit established under:

278 (i) Title 49, Chapter 14, Part 5, Death Benefit;

279 (ii) Title 49, Chapter 15, Part 5, Death Benefit;

280 (iii) Title 49, Chapter 16, Part 5, Death Benefit;

281 (iv) Title 49, Chapter 17, Part 5, Death Benefit;

282 (v) Title 49, Chapter 18, Part 5, Death Benefit; or

283 (vi) Title 49, Chapter 19, Part 5, Death Benefit;

284 (d) a death benefit provided under a group insurance policy under[;]:

285 (i) Title 49, Chapter 12, Part 5, Death Benefit; or

286 (ii) Title 49, Chapter 13, Part 5, Death Benefit; or

287 (e) a refund of member contributions upon termination.

288 (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree,
289 participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or
290 any other retirement right accrued or accruing under this title and the assets of the funds created
291 by this title are not subject to alienation or assignment by the member, retiree, participant, or
292 their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal
293 or equitable process.

294 (3) The office may, upon the request of the retiree, deduct from the retiree's allowance
295 insurance premiums or other dues payable on behalf of the retiree, but only to those entities
296 that have received the deductions prior to February 1, 2002.

297 (4) (a) The office shall provide for the division of domestic relations order benefits
298 with former spouses and family members under an order of a court of competent jurisdiction
299 with respect to domestic relations matters on file with the office.

300 (b) The court order shall specify the manner in which the domestic relations order
301 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

302 (c) Domestic relations order benefits split under a domestic relations order are subject
303 to the following:

304 (i) the amount to be paid or the period for which payments shall be made under the
305 original domestic relations order may not be altered if the alteration affects the actuarial
306 calculation of the allowance;

(ii) payments to an alternate payee shall begin at the time the member or beneficiary begins receiving payments; and

(iii) the alternate payee shall receive payments in the same form as allowances received by the member or beneficiary.

(d) A court order under this section may not be issued more than 12 months after the death of the member.

(5) In accordance with federal law, the board may deduct the required amount from any benefit, payment, or other right accrued or accruing to any member or beneficiary of a system, plan, or program under this title to offset any amount that member or beneficiary owes to a system, plan, or program administered by the board.

(6) The board shall make rules to implement this section.

Section 4. Section **49-14-403** is amended to read:

49-14-403. Annual cost-of-living adjustment -- Enhanced adjustment -- Eligibility.

(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-14-402 and Part 5, Death Benefit, of this chapter if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) Unless Subsection (2)(b) applies, the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) If the participating employer has made an election under Subsection (5), and in lieu of the annual increase under Subsection (2)(a), the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.

(c) Annual increases in the Consumer Price Index in excess of the applicable maximum annual increase under this Subsection (2), shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than the applicable maximum annual increase under this Subsection (2).

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the

allowance.

(5) (a) A participating employer may make a one-time election to provide the annual cost-of-living adjustment under Subsection (2)(b), in lieu of the annual cost-of-living adjustment under Subsection (2)(a), for the participating employer's current and future retirees.

(b) A participating employer shall make the election under this Subsection (5) prior to December 1, 2009.

(c) The participating employer shall indicate whether or not it elects to participate in this benefit by enacting a resolution or ordinance to that effect and making an application to the office.

(d) The effective date for the annual cost-of-living adjustment under Subsection (2)(b) is January 1 of the year following an election under Subsection (5)(a).

(e) Notwithstanding the election provided under this section, the state, as a participating employer, shall provide the annual cost-of-living adjustment under Subsection (2)(b) to its eligible employees and retirees effective on January 1, 2009.

(6) (a) To be eligible for the annual cost-of-living adjustment under Subsection (2)(b), a retiring employee shall earn the final 72 months of service credit prior to initial retirement:

(i) as an employee of a participating employer who:

(A) has made the election under Subsection (5)(a); or

(B) is included under Subsection (5)(e); and

(ii) in a covered position under Title 49, Chapter 14, Public Safety Contributory Retirement System Act or under Title 49, Chapter 15, Public Safety Noncontributory Retirement System Act.

~~[(b) The eligibility requirements under Subsection (6)(a)(i) do not apply to a person who retires prior to July 1, 2008.]~~

~~[(c)]~~ (b) The annual cost-of-living adjustment under Subsection (2)(b) may not be paid to a retiree who is not eligible under this Subsection (6).

(7) An allowance adjustment made under Subsections (2)(b) and (5) may not be paid prior to the effective date of the enhanced cost-of-living adjustment for the participating employer.

(8) The board may adopt rules for:

(a) the administration of the election provided under Subsection (5); and

(b) the effective date of the enhanced cost-of-living adjustment for participating employers.

Section 5. Section **49-15-403** is amended to read:

49-15-403. Annual cost-of-living adjustment.

(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-15-402 and Part 5, Death Benefit, of this chapter if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) Unless Subsection (2)(b) applies, the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) If the participating employer has made an election under Subsection (5), and in lieu of the annual increase under Subsection (2)(a), the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.

(c) Annual increases in the Consumer Price Index in excess of the applicable maximum annual increase under this Subsection (2), shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than the applicable maximum annual increase under this Subsection (2).

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

(5) (a) A participating employer may make a one-time election to provide the annual cost-of-living adjustment under Subsection (2)(b), in lieu of the annual cost-of-living adjustment under Subsection (2)(a), for the participating employer's current and future retirees.

(b) A participating employer shall make the election under this Subsection (5) prior to December 1, 2009.

(c) The participating employer shall indicate whether or not it elects to participate in this benefit by enacting a resolution or ordinance to that effect and making an application to the office.

(d) The effective date for the annual cost-of-living adjustment under Subsection (2)(b)

is January 1 of the year following an election under Subsection (5)(a).

(e) Notwithstanding the election provided under this section, the state, as a participating employer, shall provide the annual cost-of-living adjustment under Subsection (2)(b) to its eligible employees and retirees effective on January 1, 2009.

(6) (a) To be eligible for the annual cost-of-living adjustment under Subsection (2)(b), a retiring employee shall earn the final 72 months of service credit prior to initial retirement ~~[effective on January 1, 2009]:~~

(i) as an employee of a participating employer who:

(A) has made the election under Subsection (5)(a); or

(B) is included under Subsection (5)(e); and

(ii) in a covered position under Title 49, Chapter 14, Public Safety Contributory Retirement System Act or under Title 49, Chapter 15, Public Safety Noncontributory Retirement System Act.

~~[(b) The eligibility requirements under Subsection (6)(a)(i) do not apply to a person who retires prior to July 1, 2008:]~~

~~[(c)]~~ (b) The annual cost-of-living adjustment under Subsection (2)(b) may not be paid to a retiree who is not eligible under this Subsection (6).

(7) An allowance adjustment made under Subsections (2)(b) and (5) may not be paid prior to the effective date of the enhanced cost-of-living adjustment for the participating employer.

(8) The board may adopt rules for:

(a) the administration of the election provided under Subsection (5); and

(b) the effective date of the enhanced cost-of-living adjustment for participating employers.

Section 6. Section **49-16-202** is amended to read:

49-16-202. Participation of employers -- Full participation in system -- Supplemental programs authorized.

(1) An employer that employs firefighter service employees and is required by Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory Retirement System or the Public Employees' Noncontributory Retirement System shall cover all of its firefighter service employees under one of the following systems:

431 (a) Chapter 12, Public Employees' Contributory Retirement Act;

432 (b) Chapter 13, Public Employees' Noncontributory Retirement Act; or

433 (c) Chapter 16, Firefighters' Retirement Act.

434 (2) Any employer that covers its firefighter service employees under Subsection (1)(c)
435 is a participating employer in this system.

436 (3) If a participating employer under Subsection (1) covers any of its firefighter service
437 employees under the Firefighters' Retirement System, that participating employer shall cover
438 all of its firefighter service employees under that system.

439 (4) (a) An employer that is not participating in this system may, by resolution of its
440 governing body submitted to the board, apply for coverage of its firefighter service employees
441 by this system.

442 (b) Upon approval of the board, the employer shall become a participating employer in
443 this system subject to this title.

444 ~~[(4)]~~ (5) A participating employer may not withdraw from this system.

445 ~~[(5)]~~ (6) In addition to their participation in the system, participating employers may
446 provide or participate in any additional public or private retirement, supplemental or defined
447 contribution plan, either directly or indirectly, for their firefighter service employees.

Legislative Review Note

as of 1-7-09 10:55 AM

Office of Legislative Research and General Counsel